IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Smt. Alshari A., Munsiff

Saturday, the 20th day of May, 2023/ 30th Vaishakha, 1945

<u>O. S. No. 349/2022</u>

<u>Plaintiffs</u>:-

1 Fr.Bobby Varghese, Aged 47 Years, S/o.Varghese Scaria, Kaithakudy House, Mannoor Kara, Irapuram Village, Kunnathunadu Taluk, Pin: 683541.

2. Fr.Binoy Varghese, Aged 53 years, S/o. Joseph Varghese, Paryath House, Elamkulam Kara, Aikkaranadu South Village, Kunnathunadu Taluk, Pin: 682311.

3. Fr.Bibin Mathew, Aged 29 years, S/o. Thomas Mathew, Charivukalayil Puthenveedu, Pidavoor Kara, Varapetty Village, Kothamangalam Taluk, Pin:686671.

By Advs. A C Thomas Adhikaram & Diana Varghese

<u>Defendants</u>:-

1. St.Peters and St.Paul's Orthodox Syrian Church (St.Peter and St.Paul's Church, Thoippil), Kizhakkambalam Kara, Kizhakkambalam Village, Kunnathunadu Taluk. Represented by its Trustee Sri. John Zachariah, Aged about 57 years, S/o. John and residing at Malikudyvalayil House, Pazhanganadu Kara, Kizhakkambalam Village, Kunnathunadu Talu, Pin: 683562.

2. Fr.Cherian Paulose, Aged about 57 years, S/o. Paulose, Kooliyattu House, Kadakkanadu Kara, Mazhuvannoor Village, Kunnathunadu Taluk – 686669.

3. Fr.Gijo Varghese, Aged about 42 years, residing at Poakkunnel House, Vadavukode Kara, Vadavucode Village, Kunnathunadu Taluk, Pin: 682310.

4. Benny M Thomas, Aged about 59 years,
   S/o. Thomas, residing at Makkamkunnel House,
   Kizhakambalam Kara, Kizhakkambalam Village,
   Kunnathunadu Taluk, Pin:683562.

5. Saji Paul, Aged about 52 years, S/o. Paily,
   residing at Pandiyappillil House, Njaralloor Kara,
   Kizhakkambalam Village, Kunnathunadu Taluk,
   Pin: 683562.

Addl D6. T K George, Aged 64 years, S/o. Kurian,
Thuruthummel House, Njaralloor Kara,
Kizhakkambalam Village, Kizhakkambalam P O.

Addl D7. Mathew John, Aged 67 years, S/o. John,
Marikuzhiyil House, Pazhanganadu Kaa,
Kizhakkambalam Village.

Addl. D6 & D7 are impleaded as per order in IA. 06/2023
dated 05/04/2023.

D1	-	By Adv. Sabu Antony
D2 to D4	-	By Adv. T V Eldho
D5	-	By Advs. Peter K Alias & Sabu John
D6 & D7	-	By Adv. M K Jayapalan

This suit having been finally heard before me on 12/04/2023 and the court on 20/05/2023 delivered the following:-

ORDER IN PRELIMINARY ISSUE

1. Suit is for injunction.

2. Plaint averments in brief:- 1st plaintiff is vicar, 2nd and 3rd plaintiffs are the assistant vicars of the 1st defendant-church, as per Kalpana Nos. AD/YMP/205/2022, AD/YMP/206/2022 and AD/YMP/207/2022 dated 15.11.2022 issued by the Metropolitan of Ankamali Diocese-Yuhanon

Mar Poly Carpos respectively. The Metropolitan had issued Kalpana bearing No. AD/YMP/208/2022 intimating this facts to Parish Assembly dated 15.11.2022. 1st defendant-church is a constituent parish church of Malankara Orthodox Syrian Church coming under the Diocese of Angamaly governed by 1934 constitution of Malanakara Orthodox Syrian Church. The 1st defendant-church is wrongly knows as St. Peter's and St. Paul's Jacobite Syrian Church. The 1st defendant-church like all other Malankara Churches followed Orthodox Syrian Faith. The head of the Malanakara Orthodox Syrian Church is the Catholic of the East and Malankara Metropolitan. The relationship between the Patriarch and the Catholicos is hereby described by the 1934 constitution of the church. The meeting of Malankara association held on 26.12.1934 convened by the Catholicos unanimously adopted a constitution called as 1934 constitution for the administration and management of the Malankara Churches, including the 1st defendant-church and its properties and its constituent parish churches and the community as a whole. The factional dispute in the Malankara church give rise to various litigations. The Hon'ble Apex Court in Moran Mar Baselios Catholicos held that the meeting of the Malankara Association held on 26.12.1934 and the 1934 constitution are valid and binding on all parish churches under the Malankara churches.

3. After the decision of the Hon'ble Apex Court all Metropolitan and Prelates accepted 1934 constitution and also submitted to the authority of Catholicose of the East. Thus the administration and management of all parish churches including the 1st defendant-church is being carried out, as per 1934 constitution. The Hon'ble Apex Court in PMA

Metropolitan case upheld the validity of 1934 constitution. After the election held on 20.03.2002, the Patriarch fraction disassociated from the Malankara Churches and formed a separate church called 'Yacobaya Suriyani Christian Association' and formed a constitution of their own commonly called as '2002 constitution'. The patriarch faction formed a separate and parelled church namely 'Yacobaya Suriyani Christian Sabha' distinct and different from that of the Malankara Orthodox church having its own Catholicose, Prelates, Bishops, Priests and other religious dignitaries. Thus they completely denounced the decision in PMA Metropolitan case.

4. The faction disputes were finally settled by the Hon'ble Supreme Court of India by the decision of (K.S. Varghese & Ors v. St. Peters and Pauls Syrian Church & Ors in 2017 (3) KLT 261 SC) and it is settled position of law that 1934 constitution fully governs the affairs of Parish Church and shall prevail. 1934 constitution is valid and binding upon the Parish Churches. The defendants 2 to 5 are the members of Jacobite faction functioning as per 'Jacobite Syrian Christian Sabha 2002' Constitution. they are not appointed as per the 1934 constitution and they have no right to act as assistant vicars and trustees respectively of the 1st defendant-church. Moreover, the alleged Metropolitan who issued the Kalapana No. ANK/169/22 dated 25.11.22 is not accepting 1934 constitution of Malankara Churches and he has no authority to issue the said Kalpana.

5. On 04.12.2022, the plaintiffs 1 and 2 went to the 1st defendant-church for conducting holy mass, they were obstructed by the defendants 2 to 5. Due to the obstructions, the plaintiffs could not conduct holy mass

and other religious ceremonies in the 1st defendant-church. 1st plaintiff filed a complaint before the SHO, Pattimattom police station. The defendants 2 to 5 colluded together and taking hasty steps to cause obstruction to the plaintiffs in conducting religious ceremonies in the 1st defendant-church and are bringing Metropolitan and Priests belonging to Patriarch faction in violation of 1934 Constitution. The defendants are under a legal obligation not to cause obstruction to the religious ceremonies conducted by the plaintiffs in the 1st defendant-church. Since, the parishioners of the 1st defendant-church are innumerable and it is impossible and impracticable to implead all those persons in the suit. Defendants 2 to 5 are impleaded in the representative capacity of representing all those persons who are interested and those who are opposing the reliefs sought for in the suit. Hence, the suit.

6. 1st defendant-church filed written statement by admitting the plaint claim.

7. Defendants 2 to 4 filed written statement by denying the plaint averments. The suit is not maintainable either in law or on facts. According to defendants 2 to 4, this court has no jurisdiction to try the suit. The suit is covered by the decision of Hon'ble Supreme court in K.S. Varghese & Ors v. St. Peter and Pauls Syrian Church & Ors. The principles of resjudicata would attract in this case also. Hon'ble Apex Court in Fr. Issac Mattammel Cor-Episcopa v. St.Mary's Orthodox Syrian Church and Others reported in 2019 (4) KHC 868 restrained all the Civil Courts and High Court in Kerala not to pass any order in violation of the mandate of Supreme Court. As per the decision of

above referred to the suit is not maintainable. The church in dispute is a public trust. The suit is hit by section 92 of the Code of Civil Procedure, accordingly without sanction under the said provision, the suit is not maintainable in law.

8. The church in dispute was established in the year of 1905 and consecrated by the Jacobite community of the locality to meet their religious needs in accordance with faith, tradition and tenets of the Jacobite church. The defendants 2 and 3, vicars of the church are conducting Holy mass and discharging all other religious functions in the church. There is no prayer in the suit for declaring the rights of plaintiffs or any prayer for removing the defendants 2 and 3 from their possession. So, the defendants have no right to get a permanent prohibitory injunction or any other relief against the defendants as prayed for. The plaintiffs never acted as the vicars of the plaintiff church. The Kalpana Nos. AD/YMP/205/2022, AD/YMP/206/2022 and AD/YMP/207/2022 as stated in the affidavit is never accepted by the church. The aforesaid Kalpana was created for the purpose of institution of the suit. The name of the 1st defendant-church is St. Peter's and St. Pauls Jacobite Syrian Church. The averment denying the same is unsustainable.

9. The 1934 constitution as stated in the plaint is not produced before the court. The church is under the administration of the patriarch or antioch and all the east. Only the religious dignitaries who are being accepted and recognized and continued by the patriarch alone have the role, as the church is concerned. The other such dignitaries are aliens to the church. The general body of the church is the supreme

authority regarding the administration and entire aspects of the church. The defendants 2 and 3 are functioning as vicar and assistance vicar of the church. The 4th and 5th defendants are the trustees of the church. The same is admitted by the plaintiffs. But, one John Zachariah is incorporated as trustee in the plaint, which is not sustainable. The said person have no right to represent the church and he is not a trustee of the church. As per 1934 constitution, the trustee has to be elected by the general body meeting and the tenure of the trustee is one year. The trustee or the trustees are the custodian of the properties of the church.

10. The plaintiffs had never acted as the vicars of the church or even came to the church. It is not true that the defendants 2 to 4 and their men caused obstructions and threatened them in entering into the church. No such incident happened on 14.12.2022. The plaintiff had created a cooked up story for the purpose of cause of action. The plaintiffs have no right to remove the defendants 2 and 3 and to act as vicars of the church. The plaintiffs have no right to conduct religious ceremonies in the church. The decision of Hon'ble Apex court reported in AIR 1995 SC 2001, operates as resjudicata with respect to all the matters decided. The plaintiffs have no cause of action for the suit against the defendants 2 to 4 before the court. The documents produced by the plaintiffs go to show that their appointment is not in a permanent nature. But, the relief sought for is permanent prohibitory injunction, which is not sustainable. The documents produced are not acceptable. Hence, the suit is to be dismissed with costs of these defendants.

11. Defendant No. 5 is filed written statement by denying the averments and facts stated in the plaint except those which are specifically admitted. The suit is not maintainable either in law or on facts. The defendant is the one of the trustees of 1st defendant-church elected by the general body of the 1st defendant-church. Plaintiffs had deceitfully arraying their man, one John Zachariah as trustee without having any supporting documents or the minutes of the general body election. The plaint schedule property belonged to St. Peter's and St. Paul's Jacobite Syrian Church. The gift deed produced also very clearly explains the name of the churches, St. Peter's and St. Paul's Jacobite Syrian church which cannot be changed without the consent of the general body of the members of the said church. As per the decision of the Hon'ble Apex Court in the case of Jacobite church, Kurinji vide their judgment dated 02.02.2022, that rights of the church is to be determined as per rules of CPC and not as per the so-called 1934 bye-law. The plaintiffs are not competent or eligible person for conducting any religious service as vicar or priest in defendant No.1 church as per the cannon of Universal Syrian church as well as the verdict of Hon'ble Apex Court in K.S Varghese case and M. M Baselios case. As per the law declared by the Hon'ble Apex Court, the plaintiffs have not complied for the pre requisits getting their status for priesthood service. The petitioners themselves acting as vicar and priest without completing theological studies is totally in admissible. The 1st defendant-church had not recommended any of the plaintiffs to sent them for the theological study for priesthood service, after screening and confirming the character and personal competency, which are pre requisites to

ordain a person as Priest. So, the 1st defendant-church and its members are not at any obligation or duty bound to accept or receive them for conducting the priesthood service as per the faith followed by Jacobite church.

12. There are many such incidents and criminal cases in our State. Appointment of the vicar and priest is not discretionary power as well as prerogative right of the so-called Metropolitan of Angamali dioceses. It is clear from the 2017 judgment, there is a requirement of procedure of adoption of 1934 booklet constitution which is mandatory for imposing the provisions over the 1st defendant-church. The prayer of the suit is based on 1932 booklet constitution. But, the same is not produced before the court as stipulated under Order 7 Rule 14 of CPC. So, an adverse inference is to be drawn in favour of the defendants. On that ground the suit is to be dismissed. As per the judgment in K.S Varghese case, no substantive, contingent or vested rights could be created by virtue of this document. Since, the 1934 constitution is not a registered one, the suit is only an attempt to defraud this Hon'ble Court and to obtain illegal and illegitimate order. There is no cause of action for the suit. The document which fails to create any right or liability is similar to a contract without consideration and such a contract is void ab initio. The defendants have no legal obligations to adhere to such a document. There is no merit in the above suit as per Order 7 Rule 14 of CPC, section 75 of the Indian Evidence Act and as per the decision in Afroth and Another v. Kuriachen K. K, Johsy v. St. Peters and St. Pauls Church, Kozhippilly. In the light of the judgment of the Hon'ble Supreme Court in the case of Jacobite Church at

Kurinji, the 1934 bye-law has ceased to be a criteria for deciding the rights of the Jacobite church and its members.

13. 1st defendant-church is administrating under the provisions of Cannon Law of Holly Universal Syrian Church as well as traditions and conventions of 1st defendant-church. The status is recognized by the constitution bench of Hon'ble Supre Court in MM Baselios v. Paulo Thulakkan case reported in AIR 1959 SC 31 popularly called as Samudhayam suit. Holy Jacobite Syrian Church is a Antioch Simhasana Church which is exempted by 1995 judgment in PMA Metropolitan case. The history of the 1st defendant-church, the so-called catholicose of Malankara Orthodox Church, Kottayam did not administrate or not exercising any power by virtue of the provisions of booklet constitution of 1934 Malankara Church. The plaintiffs are themselves described as priest of Malankara Orthodox Syrian Church, but these plaintiffs or the so-called Malankara Orthodox Syrian Church is not recognizing the Mulanthuruthy Synod 1876. All the Metropolitan and Priests, who are under the Holy throne of Patriarch of antioch have every right to enter the church for the exercising the spiritual and temporal administration of the church. The fact is substantiated by 1959 judgment of the Hon'ble Supreme Court.

14. The present suit itself is resjudicata and deserves to be dismissed and further the decree of the judgment in 1995 PMA Metropolitan case declared that Jacobite Church and its properties have its own juristic personality and the properties held by the parish churches cannot be declared to vest in Catholicos or the Diocesan metropolitan or Malankara Metropolitan. So, the petitioners and their fraction have no

authority over the first defendant-church. The provisions in 1934 Booklet constitution has not been accepted or implemented in the defendant church till date. The plaintiffs are not entitled to get any benefit or 1876 Synod held at Mulanthuruthy knows as Mulanthuruthy Synod and consequently the so-called Mathews IIIrd cannot claim any right or derive any administrative powers over the parish churches and consequently appoint any priests in any of the Parish churches as vicar.

15. The plaintiff faction filed contempt petition No. 1022/19, before the Hon'ble Supreme Court on the basis of letter issued (Order 12 Rule 11 CPC) by Chief Secretary of Government of Kerala dated 22.08.19 for production of original of 1934 constitution. But the Hon'ble Supreme Court while considering the said action of the Government of Kerala found that, the above said letter does not attract any contemptuous act and contempt proceedings, and there after, the plaintiffs fraction withdrew the above contempt petition dated 29.11.19 unilaterally. Even in the original suit, which ended up in 2017 judgment, the plaintiffs fraction have not bothered to produce the so-called 1934 bye-law during trial under Order XIII or Order 11(12). Even by submitting the original of 1934 Booklet constitution, the petitioners are not entitled to get any relief in the above case. The narration of para fourteen to eighteen are intended to illegally establish prerogative status over the first defendant-church by the virtue of provision of a private document ie, 1934 booklet constitution, without producing the original of the same as per the Order VII Rule 14, Order XIII or Order 11(12) Code of Civil Procedure Code.

16. The averments are totally against the settled position of 1934 as laid down in 2017 judgment. If the original 1934 is produced, the story of disloyalty of India's Independent struggle and sovereignty of or great nation will come in public. This is presumably the reason for them to not produce the original 1934 constitution before the Chief Secretary of Government or Kerala on the request dated 2.08.19. The Secretary of Malankara Orthodox Syrian Church, Mr. Adv. Biju Omman who is understood to be responsible for publishing the present booklet or 1934 constitution in latest edition, admitted before the Hon'ble District Court, Ernakulam (in suit No. 20/13) that, the original of the same was not seen by him before printing the substance. The present printed copy of 1934 constitution circulated is illegally printed material. The original document of 1934, if produced would be fatal to the interests of the plaintiffs. The petitioners are not entitled to get any order, by virtue of the provisions of 1934 booklet constitution. The petitioners may be put to proof of the same. As per the decision of the Hon'ble Apex Court in St. Peter Church, Kurunji, 1934 booklet bye-law cannot be a cause of action for filing a suit or asserting any claim/right on its basis. So, the petitioners are indebted and obliged to prove their pleading with sufficient documentary evidence and the so-called 1934 booklet cannot be of any use. If the present suit is decreed, it will amount to handing over the possession of 1st defendant-church and the land appurtenant thereto to the plaintiffs. The plea for appointment of vicar is a fraudulent approach and short cut to take over possession of church without filing a suit for possession with proper valuation. The plaintiffs cannot re-agitate the same issue clearly decided and take

possession of the defendants church without filing a proper suit for possession/declaration and adducing evidence as per law, under proper valuation of the suit and paying court fee.

17. The position of the Malankara church is completely different from the parent Jacobite church. The plaintiffs faction having claimed their position as an autocephalous church cannot claim rights on the 1st defendant-church. The so-called 1934 booklet follows a different canon law and hence its not applicable to Malankara Jacobite church which is held to be the only church existing as per 1956 judgment and as admitted by the plaintiffs predecessors also. Hence, the plaintiffs cannot turn around and now take a different stand and agitate that the 1st defendant-church belongs to a different church being Malankara Orthodox church. The position is more clear when the Government of Kerala has clearly distinguished the Malankara Jacobie Syrian church and Malankara Orthodox Syrian church as two different minority communities vide as extra ordinary gazette No. 1706 on 4th June 2021. The allegation that first and second plaintiffs went to the 1st defendant-church on 04.12.2022 created untrue story for getting unfair advantage in the above suit. The valuation of the suit not correct. The documents which are produced with plaint are not cogent materials. The above suit is only an attempt to satiable the plaintiffs and their fractions illegitimate needs and for causing issues of law and order in public and thus for disturbing the peaceful atmosphere of Jacobite church under the influence of petition's church hierarchy. Hence, the suit the is to be dismissed with costs of this defendant.

18. On the basis of the pleadings issues were raised. Issue No. 1 was heard as preliminary issue:-

    Is the suit maintainable in view of the decisions of Hon'ble Apex Court in K.S Vargese & Others v. St. Peters and St. Pauls Syrian Orthodox Church and Others and Fr. Issac Mattammal Cor Episcopa v. St. Mary's Orthodox Syrian Church and Others?

19. Heard both sides.

20. According to the plaintiffs, they are the vicars and assistant vicars appointed as per 1934 constitution. The defendants 2 to 5 are not appointed as per 1934 constitution. Therefore, the plaintiffs alone are entitled to conduct Holly mass and other prayers in the 1st defendant-church. The defendants are obliged not to obstruct the functions of the plaintiff church. According to the petitioner, in view of the decision of the Hon'ble Supreme Court in **K.S. Varghese v. St.Peter'S & Paul'S Syrian Orth. & Others** reported in **2017 KHC 6531**, the 1934 constitution fully governs the affairs of the Parish Churches and shall prevail. As per the pleadings in the plaint, it can be seen that, the suit is filed on the basis of the decision rendered by Hon'ble Apex Court in K.S Varghes case and PMA Metropolitan case. As per the case of the plaintiffs, the Hon'ble Apex Court had upheld that the 1934 constitution is binding upon the all the parishioners and it is not open to any individual church to decide to have their new constitution like at of 2002. It is not permissible to create a parallel system of management in churches under the guise of spiritual supremacy of the Patriarch in view of the decision of the Hon'ble Apex court in

K.S. Varghese case rendered in the year of 2017. The plaintiffs have absolutely no case that the suit is not covered by the decision of the Hon'ble Apex Court in K.S. Varghese case.

21. The Hon'ble Apex Court in Fr. Issac Mattammel Cor-Episcopa v. St. Mary's Orthodox Syrian Church and Ors, made clear that the Civil courts and High Court in Kerala shall not pass any order in violation of the mandate or this court's decision in K. S. Varghes case and it is also made clear that the courts that in future, the violation of the judgment and order to be viewed seriously. The Hon'ble High Court also made it clear that the similar matters pending were directed to be decided as per the decision rendered by the Hon'bel Apex court in K. S. Varghese case. It was further held that there can be no further litigation as decision in the representative suit is binding.

22. In view of the decision of the Hon'bel Apex court in Fr. Mattemmel case there cannot be any further litigations on the mater covered by the decision of the Hon'ble Apex court in K.S Varghese case. The Hon'ble High Court of Kerala in **Fr. K.M. Zachariah and other v. St. George Church** (R.P 544/20) made clear that there is no scope for a further adjudication of mater covered by the decision in K.S. Varghese case and Fr. Issac Mattammel case, which has been concluded by the Hon'ble Apex Court and the impugned order in the original petition was treated as an order rejecting the plaint. The Hon'ble High Court in C.V Kuriakose and C.C. Joseph and Others, FAO 135/18 is produced affirmed the order of Hon'ble District Court in temporary injunction application confirming the order by relying on the decisions of the Hon'ble Apex Court in K.S Varghese case and Fr. Issac Mattammel

case. As per the direction of the Hon'ble Apex Court in Fr. Issac Mattammel case, there is a clear direction to decide the matters pending in accordance with the Hon'ble Apex Court in K.S Varghese case. The above decision of the Hon'ble Apex Court in FAO 135/18 is rendered in a decision pending when the decision of Hon'ble Apex Court in Fr. Issac Mattermmel case. The decisions rendered upon the case pending, while the Hon'ble Apex Court rendered the decision in Fr. Issac Mattammel case cannot be made applicable to a case filed after the decision of the Hon'ble Apex Court in Fr. Issac Mattammel case. The decision of the Fr. Issac Mattammel case made it clear that no further litigations cannot be made upon the matters covered by the K.S Varthese case. The plaintiffs herein have no case that the case in hand is not a matter covered by the decision of the Hon'ble Apex Court in K.S. Varghese case. On the other hand, the pleadings would clearly go to show that the suit is filed relying on the decisions of the Hon'ble Apex Court in K.S. Varghese case and PMA Metropolitan case. In such scenario, when the matter in adjudication is covered by the decision of the Hon'ble Apex Court, there cannot be further litigations on the same matters in view of the decision of the Hon'ble Apex Court in Fr. Issac Mattammel case. So, in view of the above discussions, in the light of the decisions of the Hon'ble Apex Court in Fr. Issac Mattammel case, I could not find the suit to be maintainable and the suit is only liable to be dismissed.

23. **In the result,** the suit is only liable to be dismissed.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 20th day of May, 2023.

Sd/-
ALSHARI A.
MUNSIFF

Appendix:-Nil

Id/-
Munsiff
(By Order)

// True copy //

(Carbon Copy issued as per order in I.A. 07/23 in OS. 349/22 dtd. 23/05/2023)

(Carbon Copy issued as per order in I.A. 08/23 in OS. 349/22 dtd. 23/05/2023)

Examiner

Junior Superintendent

Typed by: jav
Compd.by : Molly

Carbon Copy of order in
preliminary issue
in
O.S. No. 349/2022
Dated : 20/05/2023